

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of)	
)	
Petition for Declaratory Ruling that AT&T's)	WC Docket No. 02-361
Phone-to-Phone IP Telephony Services Are)	
Exempt from Access Charges)	

COMMENTS OF THE MISSOURI SMALL TELEPHONE COMPANY GROUP

I. INTRODUCTION AND SUMMARY

AT&T's Petition seeks a declaratory ruling that its "phone-to-phone" Internet Protocol ("IP") and voice over Internet Protocol ("VOIP") telephony services are exempt from the requirements to order and pay for access services. AT&T claims that "services provided over the Internet" must be exempt from access charges, but AT&T's IP telephony services use the same network facilities and services in exactly the same way that other interexchange voice traffic does when it arrives at small rural exchanges in Missouri. Moreover, AT&T's IP telephony services use the network for exactly the same purpose – interexchange voice calling – as traditional interexchange access traffic, and they impose the same burdens on rural networks as traditional interexchange traffic. Therefore, AT&T's IP telephony services should be subject to the same rules as other interexchange traffic. The Missouri Small Telephone Company Group urges the Commission to reject AT&T's Petition and deny AT&T's efforts to use other companies' networks for free.

II. COMMENTS

A. THE MISSOURI STCG MEMBER COMPANIES HAVE MADE SUBSTANTIAL INVESTMENTS IN THEIR RURAL MISSOURI NETWORKS.

AT&T states that its phone-to-phone IP and VOIP telephony services should be exempt from access charges because AT&T has made “large investments to upgrade Internet backbone facilities.” AT&T’s reasoning is not persuasive. The members of the Missouri Small Telephone Company Group (MoSTCG)¹ have also made substantial investments in their network facilities to provide telecommunications services in rural Missouri, but this does not entitle the MoSTCG member companies to free usage of AT&T’s Internet backbone or interexchange network. Rather, it entitles the MoSTCG member companies to compensation for the use of their network facilities.

B. AT&T’S IP TELEPHONY SERVICE USES THE SAME ACCESS SERVICES IN THE SAME WAY AS OTHER INTEREXCHANGE VOICE TRAFFIC.

AT&T argues that its IP telephony services should be exempt from access charges because they are “provided over the Internet.”² However, AT&T’s IP telephony traffic is no different from traditional voice telecommunications traffic when it reaches the MoSTCG member companies’ networks, and it uses the same access services in exactly the same way as other interexchange traffic. AT&T explains:

¹ See Attachment A

² AT&T’s Petition, p. 5.

A “phone-to-phone IP call will travel over the public switched network to a local gateway where it is converted to Internet Protocol and then routed over [AT&T’s] Internet backbone to a terminating gateway, *where it is converted back to voice and sent over local exchange facilities to the called party.*”³

Thus, by the time AT&T’s IP telephony traffic “hits” the MoSTCG networks, it looks and acts exactly like any other interexchange voice call. It transverses the same facilities, requires the same functions, and creates the same costs as any other minute of interexchange traffic. AT&T’s IP telephony traffic is no different from other interexchange voice traffic when it arrives at the MoSTCG networks, and there is no reason to treat it as anything but voice traffic.

C. AT&T’S VOIP TRAFFIC IMPOSES THE SAME BURDENS ON THE MISSOURI STCG’S NETWORKS AS TRADITIONAL INTEREXCHANGE TRAFFIC.

AT&T concedes that “all phone-to-phone and computer-to-phone services are terminated in precisely the same way, for they all route traffic in voice (TDM) format from the providers’ terminating gateways to called parties *over circuit switched local exchange facilities.*”⁴ Thus, AT&T’s IP telephony traffic uses the same MoSTCG member company network facilities and services as other interexchange voice traffic. This is true whether AT&T is providing phone-to-phone or computer-to-phone services.⁵

³ AT&T’s Petition, pp. 10-11 (emphasis added).

⁴ AT&T’s Petition, p. 30 (emphasis added).

⁵ AT&T’s Petition, p. 11 (Most pertinently, *all phone-to-phone and all computer-to-phone calls are terminated in identical ways, in identical protocols, and over identical local exchange facilities.*”) (emphasis added).

D. AT&T’S IP TELEPHONY SERVICES ARE FUNCTIONALLY THE SAME AS TRADITIONAL VOICE “TELECOMMUNICATIONS” SERVICES, SO THEY SHOULD BE SUBJECT TO THE SAME RULES AS OTHER INTEREXCHANGE VOICE TRAFFIC.

In its 1998 *Report to Congress*,⁶ the Commission defined “phone-to-phone” IP telephony as a service which: (1) holds itself out as providing voice telephony service; (2) does not require customers to use CPE different from the CPE necessary to place ordinary touch-tone calls over the public switched telephone network; (3) allows customers to call telephone numbers associated with the North American Numbering Plan; and (4) transmits customer information without net change in form or content.⁷ The Commission explained:

*From a functional standpoint, users of these services obtain only voice transmission, rather than information services such as access to stored files. The provider does not offer a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information. Thus, the record currently before us suggests that this type of IP telephony lacks the characteristics that would render them “information services” within the meaning of the statute, and instead bear the characteristics of “telecommunications services.”*⁸

Accordingly, the Commission stated, “We note that, to the extent we conclude that certain forms of phone-to-phone IP telephony service are ‘telecommunications services,’ and to the extent the providers of those services *obtain the same circuit-switched access as obtained by other*

⁶ *In the Matter of the Federal-State Board on Universal Service*, CC Docket No. 96-45, *Report to Congress*, 13 FCC Rcd 11501, rel. April 10, 1998.

⁷ *Id.* at ¶ 88.

⁸ *Id.* at ¶ 89 (emphasis added).

interexchange carriers, and therefore *impose the same burdens on the local exchange as do other interexchange carriers*, we may find it reasonable that they pay similar access charges.”⁹

AT&T’s “Internet” telephony services fit the Commission’s definition of phone-to-phone IP telephony, and they have the same characteristics as other interexchange telecommunications services. Specifically, AT&T’s IP telephony services use the same circuit-switched access as obtained by other interexchange carriers (“IXCs”) for interexchange voice traffic, and they impose the same burdens on the local exchange networks as other interexchange traffic. Therefore, AT&T’s IP telephony traffic should be subject to the same access charges as any other IXC traffic.

E. AT&T MUST PAY FOR THE ACCESS FACILITIES IT USES.

AT&T claims that “the adoption of a rule that ratifies the longstanding *de facto* ISP exemption for all VOIP services will cause no cognizable harm to incumbents or to any objective of the Act.”¹⁰ But AT&T has provided no compelling or convincing reason why it should be exempted from paying the MoSTCG member companies for the use of their access facilities and services. Moreover, AT&T’s Petition has the potential to do very real harm to the MoSTCG’s networks and to the concept of universal service.

The Act and the Commission’s rules require telecommunications providers to contribute

⁹ *Report to Congress*, ¶ 91.

¹⁰ AT&T’s Petition, p. 32.

to universal service mechanisms and pay access charges.¹¹ If AT&T is allowed to avoid its responsibility to pay access charges for interexchange voice traffic by using IP technology within its own internal network, then three things are likely to happen. First, AT&T will send more interexchange voice traffic towards its own internal IP facilities in order to avoid access charges. Second, other IXC's will also begin sending their interexchange traffic towards internal IP facilities in order to avoid access charges. Finally, the resulting decline in interexchange access traffic will adversely affect needed revenue streams and thus discourage continued improvement of access facilities and place upward pressure on the MoSTCG end user customers' rates. It would be bad public policy to allow AT&T's interexchange voice traffic to receive a free pass because of an artificial "Internet telephony" exemption.

AT&T's Petition is simply another effort to dodge paying for the use of the MoSTCG's facilities and services. Under AT&T's position, AT&T could simply claim that its interexchange traffic "touched" the Internet at some point, and AT&T would be absolved of responsibility for payment of access charges. This is just the latest scheme devised by AT&T to avoid paying access for its interexchange traffic. The New York Public Service Commission got it right when it examined a similar Internet telephony service offering. After applying the same factors enumerated by the FCC in its *Report to Congress*, the New York Commission held that the service was "simple, transparent long distance telephone service, virtually identical to traditional

¹¹ *Report to Congress*, ¶ 91.

circuit-switched carriers.”¹² Accordingly, the New York Commission held that the Internet telephony provider was liable for properly billed access charges. After examining AT&T’s Petition, this Commission should reach the same conclusion.

III. CONCLUSION

AT&T’s IP telephony services use the same circuit-switched access services as obtained by other IXC’s for interexchange voice traffic, and they impose the same burdens on the MoSTCG member companies’ networks as other IXC’s. Therefore, AT&T must pay for the access services that its IP telephony uses, and the Commission should deny AT&T’s Petition.

Respectfully submitted,

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¹² *Complaint of Frontier Telephone of Rochester against US DataNet Corporation Concerning Alleged Refusal to Pay Intrastate Carrier Access Charges*, Case No. 01-C-1119, *Order Requiring Payment of Intrastate Carrier Access Charges*, 2002 N.Y. PUC LEXIS 241, issued May 31, 2002.

ATTACHMENT A

Missouri Small Telephone Company Group

BPS Telephone Company
Cass County Telephone Company
Citizens Telephone Company
Craw-Kan Telephone Cooperative, Inc.
Fidelity Telephone Company
Goodman Telephone Company, Inc.
Granby Telephone Company
Grand River Mutual Telephone Corp.
Green Hills Telephone Corp.
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
KLM Telephone Company
Lathrop Telephone Company
Le-Ru Telephone Company
McDonald County Telephone Company
Miller Telephone Company
New Florence Telephone Company
New London Telephone Company
Orchard Farm Telephone Company
Ozark Telephone Company
Peace Valley Telephone Co., Inc.
Rock Port Telephone Company
Seneca Telephone Company
Steelville Telephone Company
Stoutland Telephone Company